(2010) 07 KAR CK 0074

In the Karnataka High Court

Case No : M.F.A. No. 1175 of 2008

Ajomon T.K. APPELLANT

Vs

New India Assurance Co. Ltd. and Another RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Citation : (2011) 1 TAC 211

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Siji Malayil, for the Appellant; M. Narayanappa, for the Respondent

Judgement

N. Ananda, J.—This is claimant''s appeal for enhancement of compensation.

2. I have heard, Mr. Siji Malayil, learned Counsel for claimant and Mr. M. Naraynappa, learned Counsel for Insurance Company.

3. The Tribunal on consideration of documentary evidence such as wound certificate, x-rays, discharge summary, medical bills and prescriptions has held that the claimant had suffered type I fractures of left tibia and fibula and associated simple injuries.

4. The Tribunal accepting the evidence of claimant that he was treated in Baptist Hospital and also taking into consideration the treatment charges and cost of medicines has awarded compensation of Rs. 93,900 under following heads:

(i) Pain and suffering Rs. 35,000 (ii) Medical expenses Rs. 23,900 (iii) Conveyance, nourishment and other incidental expenses Rs. 5,000 (iv) Loss of amenities and enjoyment of life Rs. 30,000

Total Compensation Rs. 93,900

5. On hearing learned Counsel for parties and after going through the records , I find the Tribunal has ignored the assessment of permanent physical disability

made by PW-2 Dr. P.N. Prakash. The Tribunal has not awarded compensation under the heads "loss of future earnings" and "loss of earnings of parents of claimant during treatment period" on the ground that the claimant had no earnings and his earnings capacity is not impaired. The Tribunal has also not made any provision for "future medical expenses", despite noticing the fact that the claimant had suffered type I fractures of left tibia and fibula. This was necessary in view of the fact that claimant has to undergo one more surgery for removal of implants and he is likely to suffer from infection. The material on records does not disclose that claimant was a earning member. The material on record does no disclose that claimant was a earning member. Therefore, treating the claimant as a non-earning member I determine income of claimant at Rs. 15,000 per annum. PW 2 has assessed 30% disability of left lower limb. Therefore, I determine permanent physical disability vis-a-vis loss of earning capacity at 10%. The claimant was aged about 20 years at the time of accident. According to the judgment of the Supreme Court, reported in, (in the case of Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 A.C.J. 254: 2009 (2) T.A.C. 677), 18 would be the appropriate multiplier to the age of claimant. Thus, "loss of future earnings" would be Rs. 27,000 (Rs. 15,000 x 18 x 10%). I award compensation of Rs. 6,000 under the head "loss of earnings of parents of claimant during treatment period" . Considering the nature of injuries and probable expenditure to be incurred for future teatment, I award compensation of Rs. 15,000 under the head "future medical expenses", Thus, claimant is entitled to total compensation of Rs. 1,41,900.

6. In the result, I pass the following.

ORDER

The appeal is accepted in part. The impugned award is modified. Compensation of Rs. 93,000 awarded by Tribunal is enhanced to Rs. 1,41,900 with interest at 6% per annum from the date of petition till the date of realisation. The payment and investment shall be in the ratio evolved in the impugned award. Parties are directed to bear their costs.